

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 278 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DOLATRAI KALIDAS PUNJANI

Versus

DURGASHANKAR GANGASHANKAR

Appearance:

NOTICE SERVED for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/04/99

ORAL JUDGEMENT

Although the matter has been called out twice today none appears for the appellant. So also none appears for the respondents.

2. This appeal is directed against the judgment and decree dated 15-3-1980 passed by the learned Asstt. Judge, Jamnagar, dismissing Regular Civil Appeal No.91 of

1977. The learned Assistant Judge confirmed the judgment and decree dated 15-7-1977 passed by the learned Civil Judge (S.D.) Jamnagar in Regular Civil Suit No. 457 of 1972.

3. The appellant-plaintiff filed the suit pleading that the suit land was of his exclusive ownership and he was in possession thereof but the defendant dispossessed the plaintiff about two years prior to the date of filing of the suit. The plaintiff had filed a possessory suit under Section 6 of the Specific Relief Act but the said suit came to be dismissed and the appeal came to be withdrawn by the plaintiff and thereafter the present suit was filed.

It was contended that the defendant was the plaintiff's uncle and as such they managed the suit property for and on behalf of the plaintiff in the capacity of a trustee. The plaintiff therefore, filed the suit for declaration of his ownership and for possession.

4. The defendant contested the suit and contended that the plaintiff and his brother had taken Rs.4500/and had executed writing dated 1-6-1957 in favour of the defendant to the effect that they had no right, title or interest in the suit land and admitted the ownership of the defendant over the suit land. The defendant also pleaded the ownership over the suit land by adverse possession pleading the ouster for more than 12 years.

5. The trial Court held that the plaintiff has failed to prove his ownership over the suit property and the allegation that the defendant managed the property on behalf of the plaintiff. The trial Court also held that the defendant had proved his ownership by adverse possession.

The District Court, Jamnagar, confirmed the aforesaid findings and dismissed the Appeal. Hence this Second Appeal.

6. While admitting this appeal the following questions were framed as substantial questions of law:

(1). In the facts and circumstances of the case has the appellate Court erred in holding that the appellant has failed to prove ownership of the suit land ?

(2). Has the appellate Court erred in holding

that respondent has become owner by adverse possession ?

(3). Has the appellate Court erred in exhibiting alleged document of relinquishment Ex.52 for want of registration ?

(4). Has the appellate Court erred in not passing a decree for joint possession in favour of the appellant in view of the finding of the Court that the land is owned by the appellant and respondent jointly ?

(5). Has the appellate Court erred in not considering the question of awarding of compensatory costs by the trial Court ?.

6. It is clear that the aforesaid questions Nos. 1,2 and 3 are mixed questions of law and fact. Both the Courts below have held that by writing dated 1-6-1957, Ex.52, the plaintiff and his brother had relinquished their right over the suit land by accepting Rs.4500/- but on the ground that although the said document was on a stamp paper, it was not registered the trial Court did not accept it as conferring ownership on the defendant. The fact remains that the defendant was admittedly in possession of the suit land since the date of the said writing. The plaintiff admitted execution of the said document dated 1-6-1957. Hence the Courts below were held that by the said act the plaintiff was ousted from possession of the land in question and the defendant acquired title to the suit land by adverse possession on completion of period of 12 years from 1-6-1957. The present suit was filed after 14 years from the said act of ouster and therefore, no fault can be found with the decisions of the Courts below.

8. As far as question no.4 is concerned, since the plaintiff and his brother had accepted Rs.4500/- while executing document dated 1-6-1957, even if the document did not confer any title on the defendant on account of non-registration of the document, the fact remains that the plaintiff did give up possession over the suit land in favour of the defendant and, therefore, it cannot be said that the defendant's possession over the suit land was for himself as well as on behalf of the plaintiff. In this view of the matter, there was no impediment to acquire the title to the suit land by adverse possession.

9. Assuming that for any reason the defendant did not acquire any title by adverse possession, the defendant was certainly protected by the doctrine of part performance as embodied in Sec.53A of the Transfer of Property Act, 1882.

10. As far as question no.5 is concerned, no appeal would lie merely on the question of costs. In any case the said question cannot be said to be a substantial question of law.

11. In view of the above discussion, the appeal deserves to be dismissed and is hereby dismissed. There shall be no order as to costs.

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